EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

Supreme Court, U.S.
FILED
MAR 5: 1999
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

(2)

No. 98-1036

STATE OF ILLINOIS,

Petitioner,

v.

WILLIAM a.k.a. SAM WARDLOW,

Respondent.

Petition for a Writ of Certiorari to the
Supreme Court of Illinois

MOTION TO PROCEED IN FORMA PAUPERIS

The Respondent, William a.k.a. Sam Wardlow, asks leave to file the attached Response to Petition for Writ of Certiorari, without prepayment of costs and to proceed in forma pauperis. Respondent has been granted leave to so proceed at trial before the Circuit Court of Cook County, Illinois and on appeal to the Illinois Appellate Court and Illinois Supreme

23 pp

Courts. Counsel for Respondent has attached an affidavit in support of this motion hereto.

Eileen T. Pahl
Assistant Public Defender

RITA A. FRY
COOK COUNTY PUBLIC DEFENDER
Eileen T. Pahl
Assistant Public Defender
69 West Washington Street
15th floor
Chicago, Illinois 60602
(312) 603-0600

AFFIDAVIT

I, Eileen T. Pahl, being first duly sworn according to law, depose and say that I am counsel for the respondent in the above-entitled case; that in support of his motion to proceed without being required to prepay fees, costs, or give security therefor, I state as follows:

1. The Office of the Cook County Public Defender was appointed by the Circuit Court of Cook County to represent the respondent in forma pauperis at trial and on direct appeal to the Illinois Appellate and Supreme Courts.

2. I have attached a copy of the order appointing the Office of the Cook County Public Defender for respondent on his direct appeal.

3. William a.k.a. Sam Wardlow is currently incarcerated in the Illinois Department of Corrections on an unrelated charge. His outdate is April 1, 1999. Mr. Wardlow will reside in a half-way house upon his release from incarceration.

4. William a.k.a. Sam Wardlow has executed the attached affidavit attesting that he has no job, no source of income, no bank accounts and owns no real estate.

5. Given his lack of income or assets and his current incarceration, it is unlikely that Wardlow would be able to afford the expenses involved in Supreme Court litigation.

FURTHERMORE AFFIANT SAYETH NOT

BY: Eileen T. Panl

SUBSCRIBED AND SWORN TO
Before me this 31st day
of March 1999.

Ann T. Rowston

OFFICIAL SEAL
ANN T ROWSTON
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 04-19-00

IN THE CIRCUIT COURT OF COOK COUNTY
CRIMINAL DIVISION

E OF THE STATE OF ILLINOIS)
) No. 95-CR-26952
) Trial Judge: SURIA
-vs-) Attorney: CAVANAUGH
)
ARDLOW)

FILED
DEC 19 1995
AURELIA PUCINSKI
CLERK OF CIRCUIT COURT

NOTICE OF APPEAL

eal is taken from the order of judgment described below:
ANT'S NAME: SAM WARDLOW
09793 D.O.B. 5/19/51
ANT'S ADDRESS: ILLINOIS DEPARTMENT OF CORRECTIONS
ANT'S ATTORNEY: PUBLIC DEFENDER OF COOK COUNTY.
ANT'S ADDRESS: 200 WEST ADAMS, CHICAGO, IL 60606
SE: UNLAWFUL USE OF WEAPON/FELON
ENT: GUILTY AFTER BENCH TRIAL
12/6/95
NCE: 2 YEARS IDOC

Sam Wardlow #c
APPELLANT

VERIFIED PETITION FOR REPORT OF PROCEEDINGS
COMMON LAW RECORD AND FOR APPOINTMENT OF COUNSEL ON APPEAL

Supreme Court Rules 605-608, appellant asks the Court to order the
ial Court Reporter to transcribe an original and copy of the proceedings,
he original with the Clerk and deliver a copy to the appellant; order tho
to prepare the Record on Appeal and to Appoint Counsel on Appeal.
ant, being duly sworn, says that at the time of his conviction he was and
able to pay for the Record or an appeal lawyer.

Steve D. Carmond
APPELLANT'S ATTORNEY

IBED and SWORN TO this _____ day of _____, 1995

_____
NOTARY PUBLIC

O R D E R

ORDERED the ~~State Appellate Defender~~/Public Defender of Cook County be
ted as counsel on appeal and the Record and Report of Proceedings be
shed appellant without cost. Dates to be transcribed:

IAL MOTION DATE(S): 10/25/95 OTHER:
AIVER DATE:12/6/95
DATE(S): 12/6/95
NCING DATE(S): 12/6/95

12-19-95

ENTER: Joseph J. Kuzmich Jr

AFFIDAVIT IN SUPPORT OF A MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

I, William a.k.a. Sam Wardlow, being first duly sworn deposes and says that I am the respondent in the above-entitled case; that in support of my motion to proceed without being required to prepare fees, costs or give security thereof, I state that because of my poverty I am unable to pay the costs of this case or to give security therefore, and that I believe I am entitled to redress.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of proceeding in this Court are true.

1. Are you presently employed? Yes___ No___

   a. If the answer is yes, state the amount of your salary or wages per month and give the names and address of your employer.

   _____

   _____

   _____

   _____

   b. If the answer is no, state the date of your last employment and the amount of the salary or wages per month which you received.

   _____

   _____

2. Have you received within the past twelve months any income from a business, profession, or other form of self-employment, or in the form of rent payments, interest, dividends, or other sources?

   Yes___ No___

   a. If the answer is yes, describe each source of income and state the amount received from each during the past twelve months.

   _____

   _____

   _____

   _____

3. Do you own any cash, checking or savings accounts?

Yes___ No___

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishing and clothing)?

Yes___ No___

a. If the answer is yes, describe the property and state its approximate value.

_____

_____

_____

_____

_____

5. List the persons who are dependent upon you to support and state your relationship to these persons.

_____

_____

_____

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

By: _____

WILLIAM A.K.A. SAM WARDLOW

SUBSCRIBED and SWORN TO
Before me this day
of , A.D., 999.

_____
Notary Public

"OFFICIAL SEAL"
Tangilla Tipton
Notary Public, State of Illinois
My Commission Expires 5/20/01

Supreme Court
FILED
MAR

No. 98-1036

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1998

STATE OF ILLINOIS,

Petitioner,

v.

WILLIAM a.k.a. SAM WARDLOW,

Respondent.

Petition for a Writ of Certiorari to the
Supreme Court of Illinois

BRIEF IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI

RITA A. FRY
Cook County Public Defender

Eileen T. Pahl *
Assistant Public Defender

69 West Washington Street
15th Floor
Chicago, Illinois 60602
(312) 603-0600

Attorneys for Respondent

* Counsel of Record

QUESTION PRESENTED

As a matter of law, is it reasonable to stop for investigation a person who runs down a gangway after a stranger's car passes by on a busy urban street?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE. 1

REASONS FOR DENYING THE PETITION 4

CONCLUSION. 11

TABLE OF AUTHORITIES

Cases:

Brown v. Texas, 443 U.S. 47,
99 S.Ct. 2637, 61 L.Ed.2d 357 (1979) 8

City of Chicago v. Morales, 177 Ill.2d 440,
687 N.E.2d 53 (1997), cert. granted
140 L.Ed.2d 664, 118 S.Ct. 1510 (1998). 8

Florida v. Rover, 460 U.S. 491, 103 S.Ct. 1319,
75 L.Ed.2d 229 (1983). 8

Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317,
76 L.Ed.2d 527 (1983). 8

In Re D.J., 532 A.2d 138
(D.C.App. 1987) 7, 9

Ornelas v. United States, 517 U.S. 690,
134 L.Ed.2d 911, 116 S.Ct. 1657 (1996) 5

People v. May,
609 N.E.2d 113 (N.Y. 1992). 7, 8

People v. Shabaz,
378 N.W.2d 451 (Mich. 1985) 7, 8

Platt v. State,
589 N.E.2d 222 (Ind. 1992) 9, 10

State v. Anderson,
454 N.W.2d 763 (Wis. 1990) 9, 10

State v. Andrews,
565 N.E.2d 1271 (Ohio 1991). 9

State v. Haviland,
532 N.W.2d 767 (Iowa 1995) 7

State v. Hicks,
488 N.W.2d 359 (Neb. 1992). 8, 9

State v. Johnson,
444 N.W.2d 824 (Minn. 1989) 10

State v. Lemmon,
568 N.E.2d 48 (Md. 1990). 7, 9

State v. Little,
806 P.2d 749 (Wash. 1991). 9

State v. Stinnett, 104 Nev. 398,
760 P.2d 124 (1988). 9

State v. Williamson,
524 A.2d 655 (Conn. App. 1987). 10

Terry v. Ohio, 392 U.S. 1,
88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) 7

United States v. Cortez, 449 U.S. 411,
101 S.Ct. 690, 66 L.Ed.2d 621 (1981) 6

United States v. Sokolow, 490 U.S. 1,
109 S.Ct. 1581, 104 L.Ed.2d 1 (1989) 6

Constitutional Provision:

U.S. Const., amend. IV. . . . . passim

Other Authorities:

Harris, Factors for Reasonable Suspicion:
When Black and Poor Means Stopped and Frisked,
69 Ind.L.J. 659 (1994) 7

La Fave, Search & Seizure,
3rd ed. (1996), vol. 4 9

Ringel, Searches & Seizures, Arrests and Confessions,
2d ed., vol 2 . . . . . 7, 9

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

No. 98-1036

STATE OF ILLINOIS,

Petitioner,

v.

WILLIAM a.k.a. SAM WARDLOW,

Respondent.

Petition for a Writ of Certiorari to the
Supreme Court of Illinois

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent, William a.k.a. Sam Wardlow, respectfully requests that this Court deny the State of Illinois' Petition for a Writ of Certiorari to review the judgment of the Supreme Court of Illinois in this case.

STATEMENT OF THE CASE

Prior to trial, hearing was held on Wardlow's Motion To Suppress Evidence. (CLR. 22, R. A3).

At the hearing, Officer Timothy Nolan testified that on September 9, 1995, he and his partner were in uniform. (R. A4). He could not remember whether they drove a marked or unmarked police car. (R. A4-A5). Officer Nolan provided no description of the make, model or other distinguishing features of his car. He did not describe the unmarked cars used by the Chicago Police Department.

Officer Nolan and his partner went to the area near 4036 West Congress due to high narcotics traffic in that general area. (R. A9). Three other police cars also went to the location. (R. A9). Officer Nolan did not state whether those officers were in uniform or whether they drove marked cars. Officer Nolan's car was the last in a "caravan" heading eastbound down Van Buren Street. (R. A9-A10). A "large amount" of people was in the area. (R. A9).

Officer Nolan saw Sam Wardlow standing in front of 4035 West Van Buren. (R. A5, A8). Wardlow was not violating any laws. (R. A5-A6). Officer Nolan did not see anything in Wardlow's hands but saw a white bag under his arm. (R. A10). Wardlow looked towards Officer Nolan and began running through the gangway and southbound through the alley. (R. A6).

Officer Nolan drove southbound down the street towards Congress. (R. A6, A10). Wardlow ran right towards him. (R. A10-A11). When he caught up with Wardlow at 4036 South Congress, Officer Nolan did not announce his office or ask Wardlow any questions. (R. A7, A10). Instead, he performed a pat down search. (R. A7). Officer Nolan discovered a white opaque heavy plastic shopping bag under Wardlow's arm. (R. A7-A8, A12). He could not see inside of the bag. (R. A8). Officer Nolan squeezed the bag and felt a very heavy, hard object which had a similar shape to a revolver or gun and which he believed to be a weapon. (R. A8, A11-A12). He opened the bag and found a .38 caliber revolver with five live rounds. (R. A7, A12-A13). According to Officer Nolan, it is common for weapons to be in the vicinity of narcotics sales. (R. A13). Officer Nolan then placed Wardlow under arrest. (R. A8).

The trial court denied the motion to suppress. (R. B13). After a stipulated bench trial, the trial court found Wardlow guilty of unlawful use of a weapon by a felon. (R. CLR. 26, R. B19). The trial court then sentenced Wardlow to two years in the Illinois Department of Corrections. (R. B19-B20).

REASONS FOR DENYING THE PETITION

The State of Illinois has presented the following question in its petition:

> Whether a person's sudden and unprovoked flight from a clearly identifiable police officer, who is patrolling a high crime area, is sufficiently suspicious to justify a temporary investigatory stop pursuant to Terry v. Ohio.

Pet. at i.

This Court should not entertain the State of Illinois' Petition for a Writ of Certiorari. The facts presented in the case below do not correspond to the issue urged here by Illinois: the record contains no evidence that the address was a high crime location or that Wardlow fled from a clearly identifiable police officer. In any event, the Illinois Supreme Court correctly decided on the merits that a person's flight from the police in a high crime area did not justify a Terry stop in the absence of other suspicious circumstances. Finally, state and federal courts are not in "irreconciliable conflict" over this issue.

1. The facts before this Court do not "squarely" present the issue framed by the Petitioner. Pet. at 5. Respondent argued below that there was no evidence in the record to support the conclusion that the area around 4035 West Van Buren in Chicago was a high crime area or that a pedestrian would have known that a car driving by contained police officers. Officer Nolan testified that he could not recall whether his car was

marked. Respondent argued that the reviewing court should not pay deference to the trial court's finding that anyone could identify a police car, marked or unmarked.

The Illinois Appellate Court found that "(t)he record here is too vague to support the inference that defendant was in a location with a high incidence of narcotics trafficking or, for that matter, that defendant's flight was related to his expectation of police focus on him." Pet. App. at 17.

The Illinois Supreme Court disagreed with the Appellate Court on this point. "(W)e believe Officer Nolan's uncontradicted and undisputed testimony, which was accepted by the trial court, was sufficient to establish that the incident occurred in a high-crime area." Pet. App. at 5, citing Ornelas v. United States, 517 U.S. 690, 699, 134 L.Ed.2d 911, 920, 116 S.Ct. 1657, 1663 (1996). The Illinois Supreme Court also found that Officer's Nolan's testimony that he could not recall whether he drove a marked or unmarked car was sufficient to establish that Wardlow fled "upon the approach of a police vehicle." Pet. App. at 5.

If the State of Illinois' petition for certiorari is granted, Wardlow contends that the Illinois Supreme Court misapplied the standard of review. The Illinois Supreme Court erroneously paid deference to the trial court's findings about a high crime area and the recognizability of police cars. The record was devoid of any facts to support those conclusions. Under proper application of de novo review, as done by the Illinois Appellate Court, the record here is too vague to

support the State's argument about a high crime area and about flight from the police.

Because the record does not support the State's assertions, this case is not "the perfect vehicle to visit and resolve" the question of whether a police officer may "chase and temporarily stop a person in a high crime area who runs away at the mere sight of the police." Pet. at 10.

2. With the exception of application of the standard of review discussed supra, the decision of the Illinois Supreme Court was correct on the merits. The Illinois Supreme Court properly applied the totality-of-the-circumstances test to conclude that both flight and presence in a high crime area are ambiguous acts which do not alone indicate criminal activity. Finally, the Illinois Supreme Court's analysis properly balances individual personal liberty rights against the legitimate needs of law enforcement.

"The concept of reasonable suspicion, like probable cause, is not 'readily, or even usefully, reduced to a neat set of legal rules.'" United States v. Sokolow, 490 U.S. 1, 7, 109 S.Ct. 1581, 1585, 104 L.Ed.2d 1 (1989), quoting Illinois v. Gates, 462 U.S. 213, 238, 103 S.Ct. 2317, 2332, 76 L.Ed.2d 527 (1983). "Reasonable suspicion" must be based on "the whole picture" and must be particularized to the specific individual. United States v. Cortez, 449 U.S. 411, 417-18, 101 S.Ct. 690, 695, 66 L.Ed.2d 621 (1981). Under these principles, the Illinois Supreme Court correctly rejected Illinois' proposed

blanket rule that any person who avoids the police in a high crime area may be stopped for investigation.

Flight is an ambiguous act which does not alone indicate criminal activity. See e.g. People v. Shabaz, 378 N.W.2d 451, 461 (Mich. 1985). Avoidance of strangers or the police may stem from motives other than consciousness of guilt. See e.g. In Re D.J., 532 A.2d 138, 142, n. 4 (D.C. App. 1987); State v. Lemmon, 568 N.E.2d 48, 56 (Md. 1990); Ringel, Searches & Seizures, Arrests and Confessions, 2d ed., vol 2. at pp. 13-36. Likewise, mere presence or even evasion in a high crime area does not warrant a suspicion that the person is involved in crime. See e.g. In Re D.J., 532 A.2d at 143; State v. Haviland, 532 N.W.2d 767 (Iowa 1995); People v. May, 609 N.E.2d 113 (N.Y. 1992); see also Harris, Factors for Reasonable Suspicion: When Black and Poor Means Stopped and Frisked, 69 Ind.L.J. 659 (1994) (criticizing Terry stops based on "location plus evasion"). Because both flight and presence in a high crime area are consistent with innocent behavior, the Illinois Supreme Court properly found that additional suspicious circumstances were required to justify Officer Nolan's stop of Wardlow.

The Illinois Supreme Court's decision also correctly balanced the marginal utility of allowing officers to stop all persons suspicious or not who avoid the police against the severe impact of such stops on the personal liberty and other protected interests of innocent citizens. Terry v. Ohio, 392 U.S. 1, 20-21, 88 S.Ct. 1868, 1879, 20 L.Ed.2d 889 (1968). The rule proposed by Illinois would jeopardize the constitutional

right to move away from an encounter with a police officer. Florida v. Royer, 460 U.S. 491, 498, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983); State v. Hicks, 488 N.W.2d 359, 364 (Neb. 1992); Shabaz, supra, 378 N.W.2d at 460; May, supra, 609 N.E.2d at 115. In rejecting the proposed blanket rule, the Illinois Supreme Court also weighed the risk of arbitrary and abusive police practices against the objectives of law enforcement. Pet. App. at 11-12, citing Brown v. Texas, 443 U.S. 47, 52, 99 S.Ct. 2637, 2641, 61 L.Ed.2d 357, 363 (1979).

Characterizing any decision to forego an encounter with the police as an "escape," Illinois protests that "the present Illinois Supreme Court opinion essentially gives citizens the license, when they see a peace officer in a high crime area, to just break and run away." Pet. at 11. This is not an "untenable-state of affairs," Pet. at 12, but an integral part of personal liberty. The Illinois Supreme Court specifically relied on its opinion in City of Chicago v. Morales, 177 Ill.2d 440, 687 N.E.2d 53 (1997), cert. granted 140 L.Ed.2d 664, 118 S.Ct. 1510 (1998), to conclude that "'(i)f the police cannot constitutionally force otherwise law-abiding citizens to move, the police cannot force those same citizens to stand still at the appearance of an officer.'" Pet. App. at 8.

Because the decision of the Illinois Supreme Court is well-reasoned and correct, this Court should not grant further review.

3. Illinois' petition exaggerates the split of authority on this issue. The majority of cases are in line with the decision of the Illinois Supreme Court. The minority cases are not in "irreconcilable" conflict but may be readily distinguished on their facts and on their analysis of the law.

Numerous commentators and courts have pointed out that the majority of jurisdictions have expressly rejected the argument that avoidance of the police alone justifies a Terry stop. See e.g. In Re D.J., supra, 532 A.2d at 142; Lemmon, supra, 568 A.2d at 54; Hicks, supra, 488 N.W.2d at 363; Ringel, Searches & Seizures, Arrests and Confessions, 2d ed., vol. 2 at pp. 13-36; LaFave, Search & Seizure, 3rd ed. (1996), vol. 4 at p. 176 (1996).

Upon closer reading, the cases cited in Illinois' petition relied on circumstances other than avoidance of the police in a high crime area to support a Terry stop. See e.g. Platt v. State, 589 N.E.2d 222, 226 (Ind. 1992) ("The whole picture shows that (the officer) pulled up behind a motorist by the side of a country road in the dead of night") (emphasis added); State v. Anderson, 454 N.W.2d 763 (Wis. 1990) (officers first encountered suspect in an alley at 2:00 a.m. after having received specific prior complaints about defendant's parking violations); State v. Little, 806 P.2d 749 (Wash. 1991) (officers who knew residents of fenced-in area had reason to believe that juveniles were trespassers); State v. Andrews, 565 N.E.2d 1271 (Ohio 1991) (officer alone on foot at night in dark area saw suspect throw object to ground); State v. Stinnett, 104 Nev. 398, 760 P.2d 124

(1988) (men near abandoned residence made movements consistent with narcotics sales); State v. Williamson, 524 A.2d 655 (Conn. App. 1987) (prior complaints of drug dealing at specific location and someone yelled out "police" when plain-clothes officers approached). Here, in contrast, the Illinois Supreme Court found that the record contained no additional suspicious circumstances to support the stop of Wardlow. Pet. App. at 10.

The cases cited in Illinois' Petition are further distinguishable because those cases fail to examine the impact on the personal liberty and other constitutional rights of law-abiding citizens or the risk of arbitrary and abusive police practices. See e.g. Platt, supra, 589 N.E.2d 222 (no discussion of freedom of movement or right to walk away from police); Anderson, supra, 454 N.W.2d 763 (same); State v. Johnson, 444 N.W.2d 824 (Minn. 1989) (dissent criticizes majority for failure to consider freedom of movement). The failure of litigants in a few minority jurisdictions to urge a full analysis of the issue does not warrant exercise of this Court's review.

In short, Illinois' Petition has advanced no grounds to warrant review. The facts in the record do not fit the question Illinois wishes this Court to reach. In any event, the decision of the Illinois Supreme Court was correct on the merits and in line with the decisions of other courts which have fully analyzed this issue.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

RITA A. FRY
Cook County Public Defender

BY: Eileen Pahl
Eileen T. Pahl *
Assistant Public Defender

69 West Washington Street
15th Floor
Chicago, Illinois 60602
(312) 603-0600

Attorney for Respondent

* Counsel of Record

March ___, 1999